IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSAs No.400 of 1994 & 112 of 1995

Decided on: September 18, 2006

RSA No.400/1994

Devta Gohari **.....Appellant.**

VERSUS

Krishan Lal and others **.....Respondents.**

RSA No.112/1995

Maya Ram **.....Appellant**

VERSUS

Krishan Lal and others **.....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. Ankush Dass Sood, Advocate, in RSA No.400/1994 and Mr. Tarlok Chauhan, Advocate, vice Mr. Anand Sharma, Advocate, in RSA No.112/1995.**

For the respondents : **Mr. Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate, for respondents No.1 & 2, in both the appeals.**

None for other respondents.

Surjit Singh, Judge (Oral)

These two appeals arise out of the same judgment, i.e. judgment dated 22.8.1994, of learned Additional District Judge, Kullu, and raise similar questions of law and, hence, they are being disposed of by a common judgment.

2. Facts relevant for the disposal of the two appeals may be noticed. Krishan Lal and Om Parkash Sharma, respondents No.1

Whether the reporters of the local papers may be allowed to see the judgment?

and 2, respectively (in RSA No.400/1994), hereinafter called plaintiffs, filed a suit against Devta Gohari, appellant (in RSA No.400/1994), hereinafter called defendant No.3, and Maya Ram and Mohan Dass, proforma respondents (in RSA No.400/1994), hereinafter called defendants No.1 and 2, respectively, pleading the following cause of action.

3. Devta Gohari, defendant No.3, was the owner of one biswa land, bearing Khasra No.459 min, situate in Phati Dhalpur, Kothi Maharaja, Tehsil and District Kullu. In the year 1954, defendant No.3 inducted Mohan Dass, defendant No.2, as tenant on the said land on annual rent of Rs.18/- for the purpose of running a shop on the said land. Defendant No.2 constructed a *Khokha* on the said land and after some time rented it out to defendant No.1 Maya Ram on monthly rent of Rs.50/-, which was lateron raised to Rs.100/- per month. After the creation of the aforesaid tenancy in respect of *Khokha* in favour of defendant No.1, defendant No.2 Mohan Dass made a gift in respect of the *Khokha* in favour of the plaintiffs by a registered gift deed. Defendant No.1 did not pay rent to the plaintiffs and consequently the plaintiffs filed a petition, under Section 14 of the H.P. Urban Rent Control Act, against defendant No.1 Maya Ram, seeking his eviction from the *Khokha*, on the ground of non-payment of rent. Defendant No.1 denied the title of the plaintiffs and pleaded that defendant No.3 was the owner of the land and the *Khokha* and that he (defendant No.1) had been inducted as tenant not by Mohan Dass defendant No.2 but by Devta Gohari, defendant No.3. Rent Controller allowed the petition, dismissing the plea of defendant No.1 that he was a tenant under defendant No.3. Appeal was filed by

defendant No.1 before the Appellate Authority. Appellate Authority accepted the appeal holding that Mohan Dass or the plaintiffs were not the owners of the *Khokha*. Plaintiffs then filed a revision petition in the High Court. That revision petition was withdrawn with the leave of the Court to file a suit for declaration of title in the Civil Court. Thereafter, the present suit was filed. Declaration was sought that the plaintiffs were owners of the *Khokha* and defendant No.1 Maya Ram was a tenant under them, as they had been gifted the *Khokha* by defendant No.2 Mohan Dass, by a registered gift deed. Defendant No.3 Devta Gohari was alleged to be the owner of the site of the *Khokha*.

4. Suit was contested by defendant No.1 Maya Ram as also by defendant No.3 Devta Gohari (appellant In RSA No.400/1994). Maya Ram alleged that he was the tenant under the Devta. He denied that he was inducted as tenant in the *Khokha* by defendant No.2 Mohan Dass. It was also denied that defendant No.3 had inducted Mohan Dass as tenant on the land on which *Khokha* stands and that Mohan Dass constructed the *Khokha*. Devta Gohari, defendant No.3 and now appellant in RSA No.400 of 1994, also denied that the land underneath the *Khokha* was leased out to Mohan Dass defendant No.2 or the *Khokha* was constructed by the said defendant. It was alleged that the *Khokha* had been constructed by defendant No.3-appellant (in RSA No.400/1994) itself and it was leased out to defendant No.1 Maya Ram.

5. Trial Court framed various issues and recorded the evidence of the parties. Ultimately, it concluded that defendant No.3 had inducted defendant No.2 Mohan Dass as tenant on the land

underneath the *Khokha* and it was defendant No.2 who constructed the *Khokha* and then let it out to defendant No.1 Maya Ram and lateron defendant No.2 Mohan Dass made a gift in respect of the *Khokha* in favour of the plaintiffs. Consequently, the suit of the plaintiffs declaring them as joint owners of the *Khokha*, in question, was decreed.

6. Maya Ram and Devta Gohari jointly filed an appeal in the Court of District Judge, which has been dismissed by the impugned judgment.

7. Now, two appeals, one by Maya Ram and another by Devta Gohari, have been filed. Appeal filed by Devta Gohari was admitted on the following substantial questions of law:

1. Whether the plaintiffs were entitled to declaration of their title against the present appellant on the basis of transfer of tenancy rights made without the consent of the appellant, who are admittedly the owners of the land and had given on rent the land to Shri Mohan Dass?
2. Whether the transfer made by Shri Mohan Dass by way of gift in favour of respondents No.1 and 2 was valid in law and any decree for declaration could be passed in favour of the appellant on the basis of the aforesaid transfer?
3. Whether the Courts below have not misread the record in arriving at the findings that the suit relates to the land which is occupied by Ram Dass in Khatauni No.207 Khasra No.459?

Appeal filed by Maya Ram was admitted on the following substantial questions of law:

1. Whether the plaintiffs were entitled to declaration of their title against the present appellant on the basis of transfer of tenancy rights made without the consent of the appellant, who are admittedly the owners of the land and had given on rent the land to Shri Mohan Dass?
2. Whether the transfer made by Shri Mohan Dass by way of gift in favour of respondents No.1 and 2 was valid in law and any decree for declaration could be passed in favour of the appellant on the basis of the aforesaid transfer?
3. Whether the courts below have not misread the record in arriving at the findings that the suit relates to the land which is occupied by Ram Dass in Khatauni No.207 Khasra No.459?
4. Whether the respondents No.1 and 2 could file a suit for recovery of rent against the appellant when there was no privity of contract or privity of estates between them?

8. I have learned the learned counsel for the parties and gone through the records.

9. Learned counsel representing appellant Devta Gohari submitted that Mohan Dass could not have created the tenancy in respect of the *Khokha*, in question, without the consent of the appellant, who is admittedly the owner of the site underneath the *Khokha*. The argument has been noticed only to be rejected. Evidence on record proves that the appellant had created tenancy in respect of the vacant site, on which the *Khokha* stands, in favour of Mohan Dass, on annual rent of Rs.18/- and he was authorized to run a shop on the site. For running a shop, superstructure was required to be raised. The tenancy created by the appellant in favour of

Mohan Dass impliedly created a permanent license in his favour to raise a superstructure. Mohan Dass defendant, in exercise of right under the implied permanent license, constructed a *Khokha*. He was, thus, the owner of the *Khokha*, i.e. the superstructure. Therefore, there was no need for him to have taken consent of appellant Devta Gohari for creation of tenancy in favour of Maya Ram in respect of the superstructure. The tenancy created by Mohan Dass in favour of Maya Ram is only in respect of superstructure and not in respect of the site and, therefore, appellant Devta Gohari cannot be heard to say that the tenancy is bad on account of its consent having not been taken. Consequently, substantial question of law No.1, formulated in RSA No.400 of 1994, is answered against the appellant, Devta Gohari.

10. As regards substantial question of law No.2, learned counsel representing the appellant submitted that the gift made by Mohan Dass in favour of the plaintiffs was bad, because he was not the owner of the *Khokha*. The gift has been made by Mohan Dass only in respect of the *Khokha* of which he was the owner. The gift is not in respect of the site underneath the *Khokha.* The Additional District Judge has clarified this position in his judgment. In any case, this Court again clarifies that the gift made by Mohan Dass in favour of the plaintiffs is only in respect of the superstructure standing on the land and that so far as the ownership of the land is concerned, appellant Devta Gohari continues to be its owner and Mohan Dass defendant No.2, who has died during the pendency of this appeal and whose estate is represented by the plaintiffs, is the tenant under

appellant Devta Gohari. With the aforesaid clarification substantial question of law No.2 is also answered against the appellant.

11. As regards substantial question of law No.3, appellant did not touch this question. This implies that he admits that the evidence has not been misread by the two Courts below.

12. For the foregoing reasons, RSA No.400 of 1994 is dismissed.

13. As regards the appeal filed by Maya Ram, i.e. RSA No.112 of 1995, learned counsel representing him submitted that appellant Maya Ram will be bound by the decision rendered by this Court in the appeal of Devta Gohari. And since the appeal filed by Devta Gohari stands dismissed, this appeal (RSA No.112/1995) filed by Maya Ram is also dismissed.

CMP No.464/2002 in RSA No.112/1995

Infructuous.

September 18, 2006(sd) **(Surjit Singh), J.**